Supreme Court, U.S.
FILED
NOV 12 1991
OFFICE OF THE CLERK

No. 91-611

In the Supreme Court of the United States

OCTOBER TERM, 1991

KEYTON E. BARKER AND PAULINE BARKER, ET AL.,
PETITIONERS

v.

STATE OF KANSAS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether 4 U.S.C. 111, which codifies the constitutional doctrine of intergovernmental tax immunity, permits the State of Kansas to tax the retirement benefits of federal military retirees even though it exempts from taxation benefits paid to retired state and local employees.

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INTEREST OF THE UNITED STATES

Petitioners are representatives of a class of about 14,000 residents of the State of Kansas who have retired from service in the United States Armed Forces, and their spouses. The State of Kansas currently requires petitioners to pay taxes on the pensions they receive for their former federal military service, although it exempts from taxation pensions paid to retired employees of the State of Kansas and its political subdivisions. Because the United States has a substantial interest in ensuring that those to whom it pays pensions receive fair and equitable tax treatment from the States, the United States recently participated in a similar case, *Davis* v. *Michigan Dep't*

of the Treasury, 489 U.S. 803 (1989), in which this Court held that principles of intergovernmental tax immunity and 4 U.S.C. 111 prohibit a State from taxing the pensions of federal retirees while exempting from tax the pensions of its own retirees. The United States has a similar interest in this case involving pensions paid to retired members of the Nation's armed forces.

STATUTORY PROVISIONS INVOLVED

1. The text of 4 U.S.C. 111 is set forth in Appendix A, *infra*, 1a.

2. The text of Kan. Stat. Ann. § 79-32,117 (Supp. 1990) is set forth in Appendix B, *infra*, 2a-7a.

STATEMENT

1. Pursuant to Kan. Stat. Ann. § 79-32,117 (Supp. 1990), a taxpayer's adjusted gross income for purposes of the Kansas income tax is generally identical to that taxpayer's federal adjusted gross income (defined in 26 U.S.C. 62), increased by the items set forth in Section 32,117(b) and decreased by the items set forth in Section 32,117(c).[1] Because federal adjusted gross income includes retirement benefits without regard to source, see 26 U.S.C. 61(a)(11), all state and federal retirement benefits would be subject to taxation under this scheme unless specifically excluded by Section 32,117(c).

Pursuant to Section 32,117(c)(ii), adjusted gross income for Kansas purposes does not include amounts that "are specifically exempt from Kansas income taxation under the laws of the state of Kansas." Be-

[1] The statute also provides for certain minor modifications related to estates, trusts, and partnerships, as set forth in Section 32,117(d) and (e).

cause various provisions of Kansas statutes exempt retirement benefits paid by the State and its political subdivisions,[2] this provision effectively grants a comprehensive exemption from tax for state and local retirement benefits.[3]

By contrast, the statute offers only a narrow exclusion from adjusted gross income for two types of specifically identified federal retirement benefits, "[amounts] received as annuities under the federal civil service retirement system, from the civil service retirement and disability fund," Section 32,117(c)(vii), and "[a]mounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. 228b(a) and 228c(a)(1) *et seq.*," Section 32,117(c)(viii).[4] All other federal re-

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[2] See Kan. Stat. Ann. § 12-5005(e) (Supp. 1990), § 13-14a10, § 14-10a10 (1982) (exempting benefits paid to retired policemen and firemen under municipal retirement plans); Kan. Stat. Ann. § 20-2618 (Supp. 1990) (exempting benefits paid under a retirement system for state judges); Kan. Stat. Ann. § 72-1768a (1985) (exempting benefits paid under a retirement system for school employees); Kan. Stat. Ann. § 74-4923(b) (Supp. 1990) (exempting retirement benefits paid under the Kansas Public Employees Retirement System and Kansas Police and Fireman's Retirement System); Kan. Stat. Ann. § 74-4978g (Supp. 1990) (exempting highway patrol pension fund benefits); Kan. Stat. Ann. § 74-49,105 (1985) (exempting benefits paid under a retirement system for court reporters); Kan. Stat. Ann. § 79-32,117(c)(ix) (Supp. 1990) (exempting benefits paid to retired city employees).

[3] The opinion of the Kansas Supreme Court did not identify any type of retirement benefit paid by a Kansas government that would be subject to the Kansas income tax scheme. See Pet. App. 9a (stating that "benefits paid to * * * state, and local government retirees are exempt from Kansas income tax").

[4] The latter provision apparently refers to portions of the Railroad Retirement Act of 1974, formerly codified in those

tirement benefits are subject to tax;[5] the most common benefits subject to taxation are the federal military retirement benefits involved in this case.[6]

2. The named petitioners are representatives of a class of approximately 14,000 Kansas residents who are retired members of the United States Armed Forces (and, where applicable, their joint taxpayer spouses), all of whom were subject to Kansas income taxation on their military retirement benefits between 1984 and 1989. In 1989, petitioners filed two class actions contending that the Kansas taxation scheme violates the constitutional doctrine of intergovernmental tax immunity and 4 U.S.C. 111 because it discriminates in favor of state retirement benefits.

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sections of the United States Code. The analogous currently effective provisions are codified at 45 U.S.C. 231 *et seq.*

[5] Federal military retirees 62 years of age or older are entitled to a $120 tax credit against Kansas income tax on their retirement benefits. Kan. Stat. Ann. § 79-32,111b (1989). But this does not substantially mitigate the general decision to tax federal military retirement benefits. First, because many military personnel may retire after 20 years of service regardless of age (see, *e.g.*, 10 U.S.C. 3911 (Army), 8911 (Air Force)), many military retirees are not eligible for this credit. Moreover, under applicable Kansas tax rates this small credit is unlikely to shield the entire amount of retirement pay from state taxation. See Kan. Stat. Ann. § 79-32,110 (1989) (setting forth tax rates for Kansas income tax).

[6] In addition to federal military retirees, the Kansas system imposes an income tax on sums paid to retired justices and judges of the United States under 28 U.S.C. 371; retired bankruptcy judges and magistrates under 28 U.S.C. 377; Foreign Service retirees under the Foreign Service Retirement and Disability Fund, 22 U.S.C. 4041 *et seq.*; National Oceanic and Atmospheric Administration retirees under 33 U.S.C. 853*o*; and Public Health Service retirees under 42 U.S.C. 212.

See Pet. App. 3a-5a. The state district court rejected their claims. *Id.* at 36a-46a. In its view, federal rules that require retired military personnel to be subject to recall to active duty make pensions payable to those individuals the functional equivalent of compensation for current services. Because the Kansas scheme taxes compensation for current services, the court perceived no discrimination against federal military retirees. *Id.* at 41a-44a.

3. The Kansas Supreme Court affirmed. Pet. App. 1a-35a. Noting this Court's holding in *McCarty* v. *McCarty*, 453 U.S. 210 (1981), that a military pension was not subject to division in a divorce proceeding, as well as other decisions noting the continued benefits and burdens that former military service places on a military retiree, see Pet. App. 17a-21a, the court agreed with the district court's determination that pension benefits received by federal military retirees effectively are "reduced current compensation for reduced current services." *Id.* at 30a. In the court's view, the differences between military retirement benefits and traditional pension plans are sufficient to justify the disparate treatment. *Ibid.*

DISCUSSION

The decision of the Kansas Supreme Court misinterprets and misapplies the constitutional doctrine of intergovernmental tax immunity, as recently articulated by this Court in *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803 (1989), and directly conflicts with a recent decision by the highest court of Colorado, holding that a State cannot impose a tax on federal military retirement benefits unless it also imposes the same tax on state employee retirement benefits.

1. In 4 U.S.C. §111, Congress has generally consented to state taxation of its employees, subject to

the proviso at issue in this case, that "the taxation does not discriminate against the * * * employee because of the source of the pay or compensation."[7] As the *Davis* Court noted, the need to consider the interests of the federal government makes the standard for determining whether a state tax discriminates quite different from the standard under which state economic regulations are tested under the Equal Protection Clause. 489 U.S. at 816; see *Phillips Chemical Co.* v. *Dumas Independent School District*, 361 U.S. 376, 385 (1960). Under the governing principles, inconsistent tax treatment is permitted only if it "is directly related to, and justified by, 'significant differences between the two classes.'" 489 U.S. at 816 (quoting *Phillips Chemical Co.*, 361 U.S. at 383).[8]

The principal basis offered by the Kansas Supreme Court to justify the disparate tax treatment of federal military retirement benefits was the continuing effect federal law has on retired members of the

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[7] As this Court concluded in *Davis*, this nondiscrimination clause is coextensive with—and thus fully preserves—the prohibition against discriminatory taxes embodied in the constitutional doctrine of intergovernmental tax immunity. 489 U.S. at 812-813.

[8] Compare *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985) (citations omitted), with regard to the Equal Protection Clause of the Fourteenth Amendment:

> The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.

Armed Forces. See Pet. App. 16a-24a.[9] To be sure, a retired officer remains a member of the Armed Forces, is still subject to the Uniform Code of Military Justice, and remains subject to recall to active duty. See *McCarty* v. *McCarty*, 453 U.S. 210, 221-222 (1981). But for several reasons these continuing effects of military service do not justify the distinctions drawn by the Kansas scheme.

First, Kansas cannot suggest that it has enacted a scheme that evenhandedly exempts all retirement benefits except for those benefits connected with sufficient ongoing obligations to justify some rational determination that the benefits are attributable in part to current services. Rather, Kansas has enacted a scheme that exempts *all* state benefits, but only certain federal benefits, identified by their source, rather than by characteristics relevant to tax policy. For example, Kan. Stat. Ann. § 20-2618 (Supp. 1990) exempts retirement benefits payable to state judges;

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[9] The Kansas Supreme Court also suggested (Pet. App. 26a) that different tax treatment might be justified by the difference in funding methods: the military retirement system is funded out of general revenues; the state and local retirement system is funded by employer and employee contributions. To the extent the suggestion relies on the federal practice of paying benefits out of general revenues rather than annual contributions, the suggestion is baseless; it is no concern of state tax policy where the federal government gets the money to pay retirement benefits. To the extent the suggestion relies on the federal practice of not requiring employee contributions, the distinction is unsupported by the facts, because Kansas law exempts all retirement benefits Kansas governmental authorities pay, even though a significant portion of those benefits is funded directly by the State. See, *e.g.*, Section 74-4920b (Supp. 1990) (discussing employer contributions to the Kansas Public Employee Retirement System).

there is no comparable exemption for benefits payable to retired federal judges under 28 U.S.C. 371(a), although federal officers retiring under that Section need provide no current services to retain their entitlement to benefits. See Pet. App. 28a-29a (summarizing similar inconsistencies).[10] The State thus cannot plausibly suggest that its scheme reflects any considered rationale other than a desire to raise as much revenue as possible without taxing pensions payable to its own employees.

These inconsistencies expose the error at the heart of the opinion of the Kansas Supreme Court: this is not a statute that treats federal military retirement benefits differently because of a reasoned conclusion that those benefits are analogous to current compensation; this is a statute that taxes federal military retirement benefits *because* they are paid by the federal, rather than the state, government. Accordingly, the Kansas income tax system violates the doctrine of intergovernmental tax immunity codified in 4 U.S.C. 111.

The rationale of the Kansas Supreme Court is undermined further by the consistent treatment under both federal and state tax law of federal retirement benefits as deferred compensation, not current compensation. For example, in federal tax law, the dis-

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[10] The Kansas Supreme Court suggested that the treatment of other federal retirees under state law is irrelevant to this case, because "[t]he legal interests of other federal retirees are not at issue in this appeal." Pet. App. 29a. We disagree. Although other federal retirees are not parties to this case, this Court's decisions make it clear that the determination of whether a state tax scheme discriminates "requires 'an examination of the whole tax structure of the state.'" *Phillips Chemical Co.*, 361 U.S. at 383 (quoting *Tradesmens Nat'l Bank* v. *Oklahoma Tax Comm'n*, 309 U.S. 560, 568 (1940)).

tinction between current compensation and deferred compensation is important under 26 U.S.C. 219, which governs the deductibility of taxpayer contributions to an individual retirement account (IRA). Pursuant to Section 219(b), the IRA deduction is limited to the amount of the taxpayer's compensation for the tax year or $2000, whichever is less. Section 219(f)(1) clarifies that the term " 'compensation' does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation." It is well settled as a matter of federal law that federal military retirement benefits are excluded from the term "compensation" for purposes of this Section. See 6 M. Weinstein, *Mertens: The Law of Federal Income Taxation* § 25C.12, at 58 (1988) ("Retirement income, including federal, civil and military retirement income, is not compensation for purposes of making deductible contributions to an IRA."). As the Kansas Supreme Court acknowledged in this case, the Kansas tax scheme follows this treatment precisely, recognizing that there is no significant difference between military retirement pay and other types of retirement benefits. See Pet. App. 24a-25a.[11]

Finally, the Kansas courts erred in relying heavily on *United States* v. *Tyler*, 105 U.S. 244 (1881),

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[11] The Kansas Supreme Court attempted to justify this treatment by explaining that "this limited definition of 'compensation' applies to § 219 *only*." Pet. App. 25a. That may be, but this does not undermine the logical inference to be drawn from the definition in Section 219: the State's failure to treat military retirement pay the same way in determining the tax base as it does in more technical areas that are less likely to have a substantial effect on revenues suggests that the court's articulated rationale is not in fact the basis for the disparate treatment, but only a cloak for discrimination against federally funded benefits.

McCarty v. *McCarty*, 453 U.S. 210 (1981), *Cornetta* v. *United States*, 851 F.2d 1372 (Fed. Cir. 1988), and *Costello* v. *United States*, 587 F.2d 424 (9th Cir. 1978), cert. denied, 442 U.S. 929 (1979), because none of those cases considered the doctrine of intergovernmental tax immunity or the meaning of 4 U.S.C. 111. Rather, those cases merely described the continuing burdens associated with military retirement benefits (which we have discussed above), in the course of deciding entirely distinct legal questions.[12] Moreover, as the discussion in *McCarty* makes clear, there are significant reasons for present purposes to conclude that military retirement benefits do not differ significantly from other forms of deferred compensation:

> The amount of retired pay a service member receives is calculated not on the basis of the continuing duties he performs, but on the basis of years served on active duty and the rank obtained prior to retirement. Furthermore, should the service member actually be recalled to duty, he receives additional compensation according to the active duty pay scale, and his rate of retired pay is also increased thereafter.

453 U.S. at 223 n.16 (citation omitted).[13]

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[12] See *Tyler*, 105 U.S. at 246 (noting that a retired officer is still technically in service, in the course of holding a retired officer entitled to the benefits of a pay raise enacted after his retirement); *McCarty*, 453 U.S. at 221-222 (discussing the distinctions between military pensions and other pensions, in the course of holding that federal law prohibited a state court from dividing a military pension in a divorce proceeding); *Cornetta*, 851 F.2d at 1382-1383; *Costello*, 587 F.2d at 426.

[13] Indeed, Congress promptly overturned the holding of *McCarty* in favor of a rule subjecting military retirement

In sum, the distinct features of the military retirement benefit system do not justify the Kansas tax scheme's disparate treatment of benefits paid under that system. In the most relevant respects, military retirement benefits are much more like other retirement benefits than current wage income. Both military and civilian employees retire and receive pay only upon satisfying the statutory requirements for eligibility. Upon retirement, military personnel, like civilian employees, cease to receive their regular salary, and are entitled only to retirement pay. Finally, both military and civilian employees receive retirement benefits based upon years of past service, as opposed to post-retirement activity. See *Kuhn* v. *Colorado*, No. 90SA299 (Colo. Sept. 16, 1991), slip op. 18-19. Moreover, as we have explained, the overall structure of the Kansas tax system strongly suggests that Kansas has singled out those benefits for disparate treatment based on the source of the benefits, not on the features identified by the Kansas Supreme Court. Accordingly, we believe that the decision of the Kansas Supreme Court is incorrect.

2. The question presented warrants this Court's review. First, the decision here conflicts with that of the highest court of the State of Colorado in *Kuhn* v. *Colorado*, *supra*. In that case, the Supreme Court of Colorado considered a state tax scheme that granted a $20,000 income tax exemption for retirement benefits generally, but only a $2,000 exemption for military retirement benefits. Slip op. 6. Applying the analysis articulated by this Court in *Davis*,

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benefits to the traditional principle permitting division of retirement benefits upon divorce. See Uniformed Services Former Spouses' Protection Act, 10 U.S.C. 1408; *Mansell* v. *Mansell*, 490 U.S. 581, 584-585 (1989).

the court noted that "the overall scheme of the [military] retirement benefits is akin to a civilian pension earned by the service member for years of active service," *Kuhn*, slip op. 18, and therefore concluded that the Colorado statute discriminated against military retirement benefits by treating them differently from other retirement benefits. Slip op. 14-19. The court then rejected the justifications the State proffered to justify the discrimination, concluding that the tax scheme "was unconstitutional under the doctrine of intergovernmental tax immunity." Slip op. 20.[14]

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[14] The decision below also is contrary to the reasoning of two other state courts that have considered claims by federal military retirees against schemes that differed from the scheme at issue here by failing to exempt general federal civil service retirement benefits; in both cases the courts accepted the claims of the military retirees and invalidated the schemes in light of *Davis*. For example, in *Pledger* v. *Bosnick*, 811 S.W.2d 286 (1991), petition for cert. pending, No. 91-375, the Supreme Court of Arkansas considered a scheme that exempted all retirement income from Arkansas governmental bodies, but exempted only the first $6,000 of retirement income from all other governmental entities. See *id.* at 288. The case reached the Arkansas Supreme Court on a dispute regarding certification of the class that could challenge the statute; the court rejected claims that federal military retirees should be excluded from the class. *Id.* at 291-292.

Similarly, in *Hackman* v. *Director of Revenue*, 771 S.W.2d 77 (Mo. 1989) (en banc), cert. denied, 493 U.S. 1019 (1990), the Supreme Court of Missouri considered a scheme that, like the scheme invalidated in *Davis*, taxed federal retirement benefits but not state retirement benefits. The State argued that *Davis* was inapplicable because the claimants before the court received military retirement benefits, unlike the civil service benefits at issue in *Davis*. The Missouri court nevertheless invalidated the scheme. 771 S.W.2d at 79-80.

Second, it is clear that this is an issue of significant importance on a nationwide level. It is true that each State is free to develop its own tax programs in light of its own circumstances, and thus that issues regarding discrimination against particular types of federal benefits may differ slightly from State to State. But considering the general similarity of pension benefits throughout the Nation, and the large number of federal military retirees, there is obvious need for a clear nationwide rule regarding the circumstances under which States may subject federal military retirement benefits to tax. As the petition suggests (Pet. 9 n.5), many state legislatures responded to *Davis* by concluding, like the Colorado Supreme Court in *Kuhn*, that the Constitution requires them to provide equal treatment to *all* federal retirees, military or civilian. If the conflicting decision of the court below remains unreviewed, state legislatures will be hard-pressed to discern their constitutional obligations and, in this time of ubiquitous budgetary constraints, will have a considerable incentive to pass schemes like the one upheld by the court below, notwithstanding the doubtful force of that court's reasoning. Further confusion and disparate treatment of similarly situated retirees should be averted by this Court's resolution at this time of the conflict in decisions.[15]

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[15] We agree with petitioners' suggestion (Pet. 7-8) that the need for review by this Court is particularly significant in a case involving a constitutional challenge to a state tax system, because the Eleventh Amendment, the Tax Injunction Act, 28 U.S.C. 1341, and prudential decisions of this Court, see, *e.g.*, *Fair Assessment in Real Estate Ass'n, Inc.* v. *McNary*, 454 U.S. 100, 116 (1981), foreclose the lower federal courts as tribunals in these cases. This Court is the

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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NOVEMBER 1991

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only federal tribunal with the capacity to address the issues presented by this case.

APPENDIX A

4 U.S.C. 111. Same; taxation affecting Federal employees; income tax

The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.

APPENDIX B

Kan. Stat. Ann. § 79-32,117 (Supp. 1990). Kansas adjusted gross income of an individual.

(a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in de-

termining federal adjusted gross income and not credited against federal income tax.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure

the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments to such sections.

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expense directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of

such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system, from the civil service retirement and disability fund.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. 228b(a) and 228c(a)(1) *et seq.*

(ix) Amounts received by retired employees of a city and by retired employees of any

board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years commencing after December 31, 1984, and prior to January 1, 1990, the amount of any gain realized by a mortgagor resulting from the sale or other disposition of real estate due to the foreclosure of a mortgage upon such real estate or the voluntary conveyance of mortgaged property to the mortgagee, or by a debtor resulting from the release of liability on a contract for the purchase of real estate, to the extent included in the taxpayer's adjusted gross income for federal income tax purposes. The provisions of this paragraph shall not apply to any gain realized by an investor from any such transaction concerning tax shelters which are required or would have been required to be registered with the federal Internal Revenue Service pursuant

to Section 6111 of the Internal Revenue Code, except that, the number of investors under such section shall be determined by treating all members of a family as one investor to the extent they would qualify as class A or class B distributees under K.S.A. 79-1537, and amendments thereto.

(xiii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246a and 13-1249 and amendments thereto.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 312324 45152